



Attorney Docket No. MONT-059/01US  
U.S. Patent No. 7,232,565

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: )  
)  
Joan M. HENSON *et al.* )  
)  
U.S. Patent No.: 7,232,565 )  
Application No.: 10/602,546 )  
)  
Filed: June 23, 2003 )  
Issued: June 19, 2007 )  
)  
For: THE USE OF ENDOPHYTIC )  
FUNGI TO TREAT PLANTS )

**SUBMISSION UNDER  
37 CFR § 1.28(c) TO CORRECT  
ERROR IN SMALL ENTITY  
STATUS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

08/08/2007 CNGUYEN2 00000016 501283 10602546  
01 FC:1461 2065.00 DA

Sir:

This is a submission under 37 C.F.R. § 1.28(c) to correct an error in claiming small entity status and to pay the deficiency resulting from the previous erroneous payments of small entity fees.

On June 23, 2003, Applicant's agent filed a patent application claiming small entity status due to ownership by Montana State University, a public research institution that qualifies for small-entity status as defined under 37 CFR § 1.27(a)(3)(ii)(A). However, co-ownership by the "Government of the United States of America, Represented by the Secretary of the Department of the Interior" has also existed since the beginning of prosecution. This assignment was formally recorded on October 26, 2004, at Reel/Frame 015917/0334. An assignment to "Montana State University" was also recorded on October 26, 2004, at Reel/Frame 015949/0905. Applicant's agent, without error and deceptive intent, erroneously paid small entity fees throughout the prosecution of this application.

In compliance with the requirements under 37 CFR § 1.28 (c), itemization of the deficiency payment can be found below, including each fee that was erroneously paid as a small entity, the date corresponding to when the small entity fee actually paid, the small entity fee paid, the deficiency amount owed, and the total deficiency payment owed.

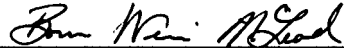
**Itemized List of Erroneous Payments:**

|   |                  |
|---|------------------|
| Application Fee at Time of Filing for Small Entity (June 23, 2003):                     | \$375.00         |
| Current Application Fee for Applicant Other than Small Entity:                          | <u>\$790.00</u>  |
|   | - \$415.00       |
| Surcharge for Late Payment of Filing Fee for Small Entity (Dec 10, 2003):               | \$65.00          |
| Current Surcharge for Late Payment of Filing Fee for Applicant Other than Small Entity: | <u>\$130.00</u>  |
|   | - \$65.00        |
| Fee for One-Month Extension of Time for Small Entity (Dec 10, 2003):                    | \$55.00          |
| Current Fee for One-Month Extension of Time for Applicant Other than Small Entity:      | <u>\$120.00</u>  |
|   | - \$65.00        |
| Fee for Three-Month Extension of Time for Small Entity (March 13, 2004):                | \$510.00         |
| Current Fee for Three-Month Extension of Time for Applicant Other than Small Entity:    | <u>\$1020.00</u> |
|   | - \$510.00       |
| Fee for One-Month Extension of Time for Small Entity (Jan 5, 2007):                     | \$60.00          |
| Current Fee for One-Month Extension of Time for Applicant Other than Small Entity:      | <u>\$120.00</u>  |
|   | - \$60.00        |
| Notice of Appeal for Small Entity (Jan 5, 2007):  | \$250.00         |
| Notice of Appeal for Applicant Other than Small Entity:                                 | <u>\$500.00</u>  |
|   | - \$250.00       |
| Issue Fee for Small Entity (May 11, 2007):  | \$700.00         |
| Issue Fee for Applicant Other than Small Entity:  | <u>\$1400.00</u> |
|   | - \$700.00       |
| <b>TOTAL OWED BY APPLICANT: \$2065.00</b>   |                  |

In compliance with the provisions of 37 CFR § 1.28 (c), the Director is hereby authorized to charge Deposit Account 50-1283 the sum of \$2065.00. Although the Applicants do not believe any additional fees are required, the Director is authorized to charge any additional fees, which may be required, or credit any overpayment to Deposit Account 50-1283.

Respectfully submitted,

**COOLEY GODWARD KRONISH LLP**



Bonnie Weiss McLeod, Ph.D.  
Reg. No. 43,255

August 7, 2007

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